

REMARKS/ARGUMENTS

The claims are 16-31. Claims 1-15 have been canceled in favor of new claims 16-31, directed to a tear open package rather than a sealable film as recited, for example, in claim 1. Claims 16 and 18 are independent claims which contain recitations similar to canceled claims 6 and 8 and essentially relate to a symmetrical layer structure and an asymmetrical layer structure of a multi-layer film, respectively. Support for the claims may be found, inter alia, in the disclosure at pages 3-5 and claims 6-9. Reconsideration is expressly requested.

The Examiner objected to claims 1 and 2 on formal grounds because the word "copolymer" was misspelled in claim 1 and claim 2 did not end in a period. In response, Applicant has canceled, inter alia, claims 1 and 2 in favor of new claims 16-31, which it is respectfully submitted obviates the Examiner's objection on this basis.

Claims 1, 2, 5, 11, 13 and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by *EPO 120 562 to Hazelton*. Claims 1-4, 6, 10-13, and 15 were rejected under 35 U.S.C. § 102(a) as being anticipated by *Roussos EP 1 300 238*. Claims 1-5, 10-13 and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by

Hirose et al, U.S. Patent No. 6,165,573. Claims 1-5 and 10-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Berger et al*, U.S. Patent Publication No. 2003/0166781. Claims 7, 8, 9 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Roussos EP 1 300 238*.

Essentially, the Examiner's position was that each of *Hazelton*, *Roussos*, *Hirose et al*. and *Berger et al*. discloses the sealable film and tear-open package recited in the claims except for the properties of the material which are said to be inherent or taught by *Hirose et al*. and except for the features of claims 7-9 and 12 which are said to be either taught by *Roussos* or within the skill of the art.

This rejection is respectfully traversed.

As set forth in new claim 16 and 18, Applicant's invention provides a tear open package produced from a coextruded laminated sealable film. The tear open package demonstrates balanced tear initiation and tear propagation properties in the crosswise and lengthwise direction of the film. At least one outer layer of the total of at least three layers of the film is made of a polymer mixture having a cycloolefin copolymer (COC) proportion

between 20 to 80 wt. % and, as the remainder, a polymer from the group of polyolefins and ethylene copolymers. Aside from the good, balanced tear properties, the tear-open packages as set forth in claims 16 and 18 are characterized by easy handling and easy production. A tear-open package typically is made of at least two films that are at least partially sealed onto one another. According to Applicant's invention as set forth in claims 16 and 18, the films are disposed so that the outermost layer of the tear-open package has a high COC proportion. When the package is torn open, shear of the film material occurs, for example. Because of the stiffer mechanical properties of the outer layer containing COC, the outer layer will break open first, and therefore, even in the case of a very thin outer layer, the tear behavior of the entire film will be determined, to a great extent, by the behavior of the outermost layer.

None of the cited references disclose or suggest a tear open package made of a coextruded laminated sealable film having at least three layers including a core comprising a polyolefin or a polymer mixture with a high polyolefin content and on each side of the core an adjacent layer made of a polymer mixture of cycloolefin copolymers and polyolefins or ethylene copolymers as recited in claim 16 or a tear open package made of a coextruded

laminated sealable film having at least three layers including first and second outside layers and at least one intermediate layer wherein the first outside layer is formed from a polyolefin, the second outside layer is formed from a polymer mixture having a cycloolefin copolymer proportion between 20 to 80 wt.%, and at least one intermediate layer formed from a polymer mixture of cycloolefin copolymers and polyolefins having a polyolefin content less than the first outside layer and greater than the second outside layer, as recited in new claim 18.

First of all, it should be noted that *Roussos EP 1 300 238*, which has been cited with respect to claims 1-4, 6-13 and 15, is not prior art. *Roussos* was published on April 9, 2003, which is after the August 9, 2002 priority date of the above-identified patent application. Accordingly, it is respectfully submitted that the rejections based on *Roussos* should be withdrawn. As new claims 16 and 18 incorporate recitations previously appearing in claims 6 and 7, respectively, it is respectfully submitted that claims 16 and 18 and dependent claims 17 and 20-25 and 19 and 26-31, which depend on claims 16 and 18, respectively, are now in condition for allowance.

In any event, none of the remaining references cited by the Examiner disclose or suggest the tear open package as recited in the claims. *Hazelton EP 0 120 562* relates to elastomer and polypropylene mixtures for optically transparent products and deals with a completely different property of polymers from that recited in Applicant's claims. Claim 1 of *Hazelton* refers to ethylene/propylene elastomers. On the second page, starting from line 7, it is explained that the designation is supposed to include all ethylene/propylene copolymers and ethylene/propylene terpolymers in general. This definition is rather doubtful, because not only is it not generally used, but also it includes a very great scope of materials, causing the material combinations of the object of the application, just like a great number of other material combinations, to be covered by this definition. This non-specific definition contains a number of materials having very different properties and is fundamentally unsuitable for claiming specific properties. From *Hazelton's* disclosure, a person skilled in the art would be unable to produce a film described in Applicant's disclosure or a tear open package having the desired tear properties, in targeted manner. In any event, as set forth in Applicant's claims 16 and 18, in addition to the use of COC, as a component of a film layer, Applicant's tear open package uses a coextruded laminated

sealable film having a specific layer structure in order to achieve the desired tear properties, which *Hazelton* provides no disclosure or suggestion of.

Hirose et al, U.S. Patent No. 6,165,573 deals in general with different multi-layer laminates, whereby cyclo-olefin copolymers can be used as a component of a layer in a multi-layer film. *Hirose et al*. fails to disclose or suggest tear-open packages having good tear-open properties. All of the exemplary embodiments in *Hirose et al*. relate to the gas permeability of the laminate, which is supposed to be improved. Therefore, the mere use of cyclo-olefin copolymers as a component of a layer in a film as disclosed in *Hirose et al*. provides no disclosure or suggestion of Applicant's tear open package as recited in claims 16 and 18 or the particular properties of tear initiation and tear propagation which result from the special arrangement and composition of the individual layers as recited therein.

Berger et al. U.S. Patent Publication No. 2003/0166781 which issued as U.S. Patent No. 6,767,966 concerns itself with the optical behavior and the shrinkability of polymers that contain cyclo-olefins. The tear initiation and tear propagation properties of the tear-open packages according to Applicant's

invention as set forth in claims 16 and 18 are nowhere disclosed or suggested.

Applicant would like to point out that the good tear-open properties of the packages as set forth in claims 16 and 18 are not just attributable to the use of cyclo-olefin copolymers as a component of a layer. Instead, the behavior is attributable, to a particular extent, to the arrangement of the individual layers. According to Applicant's invention as set forth in claims 16 and 18, two different arrangements of layers are set forth. Thus, in claim 16, films whose two outer layers have a high cyclo-olefin copolymer proportion are proposed. In addition, in claim 18, a film is proposed that has a high cyclo-olefin copolymer proportion in one of the outer layers. On page 5, line 14, of the disclosure, it is stated that in this case, the layer with the low content of cyclo-olefin copolymer should be used as a sealing layer. In the two proposed embodiments of the invention, moreover, the outermost layer therefore has the greatest proportion of cyclo-olefin copolymers. When such a package is torn open, the outermost layer of the film will break open first, because of the mechanical properties that are determined by the high cyclo-olefin copolymer content. Surprisingly, as shown in

the examples, the tear behavior of the entire tear-open package can be determined even with very thin outer layers of the film.

Accordingly, it is respectfully submitted that the claims are patentable over the cited references.

In summary, claims 1-15 have been canceled and new 16-31 have been added. In view of the foregoing, it is respectfully requested that the claims be allowed and that this case be passed to issue.

Applicant also submits herewith a Supplemental Information Disclosure Statement.

Respectfully submitted,
RALF NIEPELT - 3

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Enclosure: Supplemental Information Disclosure Statement
PTO-1449 form
Copy of Petition for one-month Extension of Time

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I hereby certify that this correspondence is being sent by facsimile-transmission to the Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 7, 2005.

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